

Handouts

3:00 p.m. Panel - Involuntary Commitment Standards

- ✓ **MCA Sections - 2009**
 - 53-21-102(7) - Definitions - "emergency situation"
 - 53-21-129 - Emergency situation - petition - detention
 - 53-21-126 - Trial of hearing on petition
- ✓ **HB 356 and fiscal note, 2011 session (Menahan)**
- ✓ **Montana Association of Counties, Memo**

MCA Sections - 2009 Involuntary Commitment Standards

[emphasis added]

53-21-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Behavioral health inpatient facility" means a facility or a distinct part of a facility of 16 beds or less licensed by the department that is capable of providing secure, inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency.

(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) "Court" means any district court of the state of Montana.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

(7) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

(8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others.

(9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) mental retardation; or

(iv) epilepsy.

(c) A mental disorder may co-occur with addiction or chemical dependency.

(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) "Mental health professional" means:

(a) a certified professional person;

(b) a physician licensed under Title 37, chapter 3;

(c) a professional counselor licensed under Title 37, chapter 23;

(d) a psychologist licensed under Title 37, chapter 17;

(e) a social worker licensed under Title 37, chapter 22; or

(f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in

psychiatric mental health nursing.

(12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

- (i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;
- (ii) failure to follow a prescribed plan of care and treatment; or
- (iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

(13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(16) "Professional person" means:

- (a) a medical doctor;
- (b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing;
- (c) a licensed psychologist; or
- (d) a person who has been certified, as provided for in 53-21-106, by the department.

(17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(19) "State hospital" means the Montana state hospital.

53-21-129. Emergency situation -- petition -- detention. (1) When an **emergency situation** exists, a peace officer may take any person who appears to have a mental disorder and to present an **imminent danger of death or bodily harm** to the person or to others into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained is a danger to the person or to others because of a mental disorder and that an emergency situation exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file findings with the county attorney who, if the county attorney determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining the professional person's actions.

(3) The county attorney of a county may make arrangements with a federal, state, regional, or private mental facility or with a mental health facility in a county for the detention of persons held pursuant to this section. If an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available to detain the person at that facility, the person may be transported to the state hospital or to a behavioral health inpatient facility, subject to 53-21-193 and subsection (4) of this section, for detention and treatment as provided in this part. This determination must be made on an individual basis in each case, and the professional person at the local facility shall certify to the county

attorney that the facility does not have adequate room at that time.

(4) Before a person may be transferred to the state hospital or to a behavioral health inpatient facility under this section, the state hospital or the behavioral health inpatient facility must be notified prior to transfer and shall state whether a bed is available for the person. If the professional person determines that a behavioral health inpatient facility is the appropriate facility for the emergency detention and a bed is available, the county attorney shall direct the person to the appropriate facility to which the person must be transported for emergency detention.

53-21-126. Trial or hearing on petition. (1) The respondent must be present unless the respondent's presence has been waived as provided in 53-21-119(2), and the respondent must be represented by counsel at all stages of the trial. The trial must be limited to the determination of whether or not the respondent is suffering from a mental disorder and requires commitment. At the trial, the court shall consider all the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the court determines that the respondent is suffering from a mental disorder, the court shall then determine whether the respondent requires commitment. In determining whether the respondent requires commitment and the appropriate disposition under 53-21-127, the court shall consider the following:

(a) whether the respondent, because of a mental disorder, is ***substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;***

(b) whether the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;

(c) whether, because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; ***and***

(d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts or omissions, ***will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety.*** Predictability may be established by the respondent's relevant medical history.

(2) The standard of proof in a hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters. However, the respondent's mental disorder must be proved to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others must be proved by overt acts or omissions, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court must be present for the trial and subject to cross-examination. The trial is governed by the Montana Rules of Civil Procedure. However, if the issues are tried by a jury, at least two-thirds of the jurors shall concur on a finding that the respondent is suffering from a mental disorder and requires commitment. The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report. The court may order the trial closed to the public for the protection of the respondent.

(4) The professional person may testify as to the ultimate issue of whether the respondent is suffering from a mental disorder and requires commitment. This testimony is insufficient unless accompanied by evidence from the professional person or others that:

(a) the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;

(b) the respondent has recently, because of a mental disorder and through an act or an omission,

caused self-injury or injury to others;

(c) because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; or

(d) (i) the respondent's mental disorder:

(A) has resulted in recent acts, omissions, or behaviors that create difficulty in protecting the respondent's life or health;

(B) is treatable, with a reasonable prospect of success;

(C) has resulted in the respondent's refusing or being unable to consent to voluntary admission for treatment; and

(ii) will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the respondent's relevant medical history.

(5) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue.

(6) An individual with a primary diagnosis of a mental disorder who also has a co-occurring diagnosis of chemical dependency may satisfy criteria for commitment under this part.

HOUSE BILL NO. 365

INTRODUCED BY M. MENAHAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE STATUTES RELATED TO INVOLUNTARY COMMITMENTS; PROVIDING FOR THE WAIVER OF THE RIGHT OF THE RESPONDENT TO BE PHYSICALLY PRESENT AT A HEARING WITH A CONCURRENCE OF THE RESPONDENT'S ATTORNEY AND THE PROFESSIONAL PERSON; ALLOWING EMERGENCY DETENTION OF A PERSON IF THE PERSON IS SUBSTANTIALLY UNABLE TO PROVIDE FOR THE PERSON'S OWN BASIC NEEDS; AND AMENDING SECTIONS 53-21-119 AND 53-21-129, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-21-119, MCA, is amended to read:

"53-21-119. Waiver of rights. (1) A person may waive the person's rights, or if the person is not capable of making an intentional and knowing decision, these rights may be waived by the person's counsel and friend of respondent acting together if a record is made of the reasons for the waiver. The right to counsel may not be waived. The right to treatment provided for in this part may not be waived.

(2) The right of the respondent to be physically present at a hearing may also be waived by the respondent's attorney and the friend of respondent, if a friend of respondent is appointed, with the concurrence of the professional person ~~and the judge upon a finding supported by facts that if~~ AND THE JUDGE UPON FINDINGS SUPPORTED BY THE FACTS THAT:

(a) (i) the presence of the respondent at the hearing would be likely to seriously adversely affect the respondent's mental condition; and

~~(b)(ii)~~ (ii) an alternative location for the hearing in surroundings familiar to the respondent would not prevent the adverse effects on the respondent's mental condition; or

(b) the respondent voluntarily expresses a desire to waive the respondent's presence at the hearing.

(3) (a) In the case of a minor, provided that a record is made of the reasons for the waiver, the minor's rights may be waived by the mutual consent of the minor's counsel and parents or guardian or guardian ad litem if there are no parents or guardian.

(b) If there is an apparent conflict of interest between a minor and the minor's parents or guardian, the

1 court shall appoint a guardian ad litem for the minor."

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3 **Section 2.** Section 53-21-129, MCA, is amended to read:

4 **"53-21-129. Emergency situation -- petition -- detention.** (1) When an emergency situation exists, a
5 peace officer may take any person who appears to have a mental disorder and appears to present an imminent
6 danger of death or bodily harm to the person or to others or to be substantially unable to provide for the person's
7 own basic needs of food, clothing, shelter, health, or safety into custody only for sufficient time to contact a
8 professional person for emergency evaluation. If possible, a professional person should be called prior to taking
9 the person into custody.

10 (2) If the professional person agrees that the person detained is a danger to the person or to others or
11 is substantially unable to provide for the person's own basic needs because of a mental disorder and that an
12 emergency situation exists, then the person may be detained and treated until the next regular business day. At
13 that time, the professional person shall release the detained person or file findings with the county attorney who,
14 if the county attorney determines probable cause to exist, shall file the petition provided for in 53-21-121 through
15 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report
16 with the court explaining the professional person's actions.

17 (3) The county attorney of a county may make arrangements with a federal, state, regional, or private
18 mental facility or with a mental health facility in a county for the detention of persons held pursuant to this section.
19 If an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available
20 to detain the person at that facility, the person may be transported to the state hospital or to a behavioral health
21 inpatient facility, subject to 53-21-193 and subsection (4) of this section, for detention and treatment as provided
22 in this part. This determination must be made on an individual basis in each case, and the professional person
23 at the local facility shall certify to the county attorney that the facility does not have adequate room at that time.

24 (4) Before a person may be transferred to the state hospital or to a behavioral health inpatient facility
25 under this section, the state hospital or the behavioral health inpatient facility must be notified prior to transfer and
26 shall state whether a bed is available for the person. If the professional person determines that a behavioral
27 health inpatient facility is the appropriate facility for the emergency detention and a bed is available, the county
28 attorney shall direct the person to the appropriate facility to which the person must be transported for emergency
29 detention."

30

- END -



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2013 Biennium

Bill # HB0365

Title: Revise laws regarding involuntary commitment

Primary Sponsor: Menahan, Mike

Status: As Introduced-Revised

- ☐ Significant Local Gov Impact
 ☒ Needs to be included in HB 2
 ☒ Technical Concerns
☐ Included in the Executive Budget
 ☐ Significant Long-Term Impacts
 ☐ Dedicated Revenue Form Attached

	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>	<u>FY 2014 Difference</u>	<u>FY 2015 Difference</u>
Expenditures:				
General Fund	\$61,780	\$61,780	\$63,016	\$64,276
Revenue:				
General Fund	\$17,885	\$17,885	\$18,243	\$18,608
Net Impact-General Fund Balance:	<u>(\$43,895)</u>	<u>(\$43,895)</u>	<u>(\$44,773)</u>	<u>(\$45,668)</u>

Description of fiscal impact: This bill will increase the number of emergency detentions and admissions to the Montana State Hospital.

FISCAL ANALYSIS

Assumptions:

1. It is assumed that Montana State Hospital (MSH) will continue to accept all emergency detentions.
2. Emergency detentions are estimate to increase by three individuals per week, or 156 per year, over current levels at MSH.
3. The average length of stay for emergency detention evaluation is 3 days.
4. Additional emergency detention days at MSH would total 468 days annually.
5. Historically, 54% of emergency detentions have resulted in involuntary commitments to MSH.
6. 85% of the people admitted as emergency detentions would have eventually been admitted as a court order.
7. 15% of the 54% of emergency detentions would be new admissions to MSH. This represents 8.1% of the 156 new detentions resulting in new involuntary commitments.
8. The average involuntary commitment at MSH totals 97 bed days.
9. Total involuntary commitment days at MSH would increase by 1,226 annually. (156 emergency commitments x 54% involuntary commitment x 15% new court ordered commitments x 97 bed days)
10. Total bed days at MSH would increase by 1,694 annually. (468 emergency detention bed days + 1,226 involuntary commitment bed days)

Fiscal Note Request – As Introduced - Revised*(continued)*

11. Food, clothing, and pharmacy operating costs for each day at MSH are \$36.47 for a total of \$61,769 annually (\$36.47 cost/day x 1694 days) with additional 2% inflationary increases for FY 2014 and FY 2015.
12. It is estimated 28.95% operating expenditures will be recovered as general fund revenues from counties.

Expenditures:

Operating Expenses	\$61,780	\$61,780	\$63,016	\$64,276
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Funding of Expenditures:

General Fund (01)	\$61,780	\$61,780	\$63,016	\$64,276
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Revenues:

General Fund (01)	\$17,885	\$17,885	\$18,243	\$18,608
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Net Impact to Fund Balance (Revenue minus Funding of Expenditures):

General Fund (01)	(\$43,895)	(\$43,895)	(\$44,773)	(\$45,668)
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Effect on County or Other Local Revenues or Expenditures:

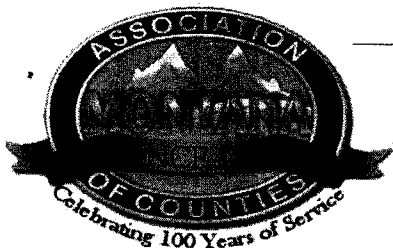
1. Pre-commitment expenses are the responsibility of the county of residence (53-21-132, MCA).
2. An increase in emergency detentions will increase costs billed to the counties.

Sponsor's Initials

Date

Budget Director's Initials

Date



Montana Association of Counties

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DATE: August 31, 2011

TO: Honorable Senator Jim Shockley, Chair and Members
Law & Justice Interim Committee

RE: Request for information - HB 365 – 2011 Legislative Session

FROM: Sheryl Wood, MACo Associate Director

Chair Shockley and members of the Committee:

1) The Montana Association of Counties will be represented on the panel to discuss HB 365 from the 2011 Session by Greg Chilcott, Ravalli County Commissioner, MACo 2nd Vice President, and Chair of the MACo Justice & Public Safety Committee.

2) The Montana Association of Counties has not adopted a position regarding the emergency detention standard compared to involuntary commitment standards. The MACo membership has adopted a policy regarding involuntary commitments which states: *MACo supports the need for the legislature to define serious mental illness in conjunction with the detention of the mentally ill. Further, there is an urgent need for the legislature to provide financial assistance relative to the detention of the serious mentally ill.*

MACo's legislative policy is set by the membership. The MACo membership will be meeting September 25 -30, 2011. We will present this issue to our membership at that time and ask for their guidance.

3) The Montana Association of Counties did not take a position on HB 365 during the 2011 Legislative Session. MACo does not believe the fiscal impact of HB 365, **as written and introduced**, would be of significant concern to counties. Should amendments to the bill be introduced during the Interim that could potentially negatively affect the counties, MACo will re-evaluate their position based on the proposed bill draft and potential fiscal impacts.

Thank you for your time and attention to this matter and we look forward to working with the Committee throughout the interim on this important issue.